## UNITED STATES OF AMERICA BEFORE THE NATIONAL RELATIONS BOARD REGION 13

TRACTOR COMPANY d/b/a CCS TRUCKING Employer

and

TEAMSTER LOCAL 727, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

and

LOCAL 707, TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION Petitioner.

Consolidated Cases 13-RC-22018 13-RC-67437 Stipulation

# EXCEPTIONS TO THE DECISION TO THE HEARING OFFICERS REPORT ON OBJECTIONS

On December 20, 2011, a Hearing was held in the above matter on Local 727's Objections to the Election conducted on November 18, 2011. Having overruled allegations of election misconduct, the Hearing Officer's Report concluded that since two employees were omitted from the list, even though one of them voted, there should be a new election. He then concludes that should he be overruled as to that, then the six (challenged) ballots be opened to see if the excluded name(s) are outcome determinative.

Local 707 takes exception only to that portion of the ruling and argues that the six (challenged) ballots should be opened *first*, prior to any election rerun being considered, as the opening of the challenged ballots might render moot the issue of his findings regarding the *Excelsior* list exclusions.

#### Objections 1, 2 and 3:

Local 707 agrees with the Hearing Officers findings on page 3 of his Report that Local 727's challenges to the ballots of Powell, Livsey Sr., Livsey Jr., Harris, Barajas and Rizzi be overruled. All six of those person's voted (even though one of them, Powell, was not on the *Excelsior* list); all six had their ballots were challenged; and all six should be opened according to the ruling. Local 707 agrees - especially in this case since one of the names that was omitted from the *Excelsior* list was that of Powell's.

Thus, since the Hearing Officer is concluding that Powell should have been an eligible voter and since he did vote along with five other challenged voters, then the parties should all find out how the vote went *first*. If there is a clear winner (which includes the counting of Powell's ballot) then the issue that was raised with regard those two persons excluded from the *Excelsior* list (which also includes Powell) might well be mooted.

To put it another way, either the omission of the only other remaining person ruled eligible to vote, namely Kendall, would effect the outcome of the election or it wouldn't. Thus a contemplated rerun election should not be considered until *after* the six ballots are opened. The logic of this seems inescapable. Local 707 finds exception with that portion of the Hearing Officers conclusion to run the new election first.

### Objection 4:

The Report overruled objections relating to alleged election misconduct.

Local 707 agrees with those findings also.

#### **CONCLUSION:**

The Hearing Officer's Report, in so far as it concludes that a rerun election should be conducted *prior* to the Board opening six unopened challenged ballots, should be overturned and the appropriate relief granted.

Respectfully Submitted

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#### **Certificate of Service**

The undersigned hereby certifies that an original & eight copies of the foregoing Exceptions to the Decision were sent, via US Mail on February 14, 2012 to:

Lester A. Heltzer - Executive Secretary National Labor Relations Board 1009 14<sup>th</sup> St., N. W., Room 11610 Washington, D.C. 20570

And that copies of the foregoing were sent, via US Mail on the same date to:

National Labor Relations Board - Region 13 209 South La Salle Street, Suite 900 Chicago, IL 60604

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